

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	§	
Review of the Commission's Rules	§	
Regarding the Pricing of Unbundled	§	WC Docket No. 03-173
Network Elements and the Resale of	§	
Service by Incumbent Local Exchange	§	
Carriers	§	

**Comments of the Public Utility Commission of Texas**

The Public Utility Commission of Texas (Texas PUC), having regulatory authority over public utilities within our jurisdiction in Texas, respectfully submits these comments in response to the *Notice of Proposed Rulemaking (NPRM)* issued by the Federal Communications Commission (FCC) in the above-captioned proceeding.

As discussed in the *NPRM*, the FCC is undertaking an initial review of its pricing rules of unbundled network elements (UNEs) to consider whether the pricing methodology is “working as intended and, in particular, whether it is conducive to efficient facilities investment.” The *NPRM* seeks comment on its tentative conclusion that a forward-looking pricing methodology should more closely account for real-world attributes of routing and topography of an incumbent’s network. The *NPRM* seeks comment on numerous network assumptions, such as network routing and construction, technology, structure sharing, and fill factors. The *NPRM* also seeks comment on the impact of changes in unbundling obligations resulting from the Triennial Review Order on UNE pricing. In addition, the FCC seeks comment on its resale pricing rules in light of the U.S. Court of Appeals for the Eighth Circuit decision to vacate the FCC’s previous resale pricing rules. Finally, the FCC is interested in the perspective of state commissions on the successes and failures of the current TELRIC rules, and the possible modifications that would help states in fulfilling their statutory role in setting UNE prices and resale discounts.

In the *NPRM*, the FCC states that one of its objectives in this proceeding is to modify or clarify the UNE costing methodology to make it easier for state commissions to develop UNE prices that meet the statutory standards established by Congress in FTA § 252(d), and to provide more certainty and consistency in the results of these proceedings.(¶9) Certainty and

consistency are important to mitigate what the FCC refers to as the “drain on the resources for the state commissions and interested parties” in costing proceedings.(¶6)

Many of the issues for which the FCC has sought comments in this *NPRM* are poised to be addressed in several current and forthcoming proceedings at the Texas PUC. These State proceedings will allow the Texas commission to evaluate in a very granular and fact intensive fashion the many issues concerning network routing and construction, as well as UNE and resale pricing. In addition, this analysis will look at ensuring that the prices established in these proceedings are as accurate and current as possible by using cost model inputs which best reflect TELRIC guidelines. Therefore, the Texas PUC respectfully requests that the FCC look to the prospective results of the Texas proceedings as responsive to the questions posed in this *NPRM*. In particular, the Texas PUC recently established a proceeding to address petitions for successor agreements to the Texas 271 Agreement (T2A),<sup>1</sup> which expired on October 13<sup>th</sup> of this year. This proceeding, conducted pursuant to FTA 252(g),<sup>2</sup> consolidates all petitions for arbitration of the T2A successor interconnection agreement. This consolidated docket will undoubtedly consider a number of costing issues including rate of return, outside plant, depreciation, and fill factor—all of which are items about which the FCC inquires. The Texas PUC is committed to concluding this consolidated proceeding by March 2, 2004 to meet the nine month timeframe established in FTA § 252(b)(2)(C). The Texas commission would ask to supplement these comments at that time to better reflect the more in-depth scrutiny given these issues throughout the next four months.

The Texas PUC has also initiated a series of dockets to implement the FCC’s Triennial Review Order (TRO).<sup>3</sup> These projects will address, among other things, the changes in the unbundling obligations. Thereafter, the Texas PUC may consider in future arbitrations the effect of these decisions on specific UNE prices. Pursuant to the TRO, these dockets are

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<sup>1</sup> The Texas 271 Agreement (T2A) is the standard interconnection agreement between SBC Texas and competitive carriers in the state.

<sup>2</sup> *Arbitration of Phase I Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*, Docket No. 28600, Order No. 1 (Sep. 30, 2003) and Order No. 5 (October 31, 2003).

<sup>3</sup> *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Report and Order on Remand and Further Notice of Proposed Rulemaking (rel. Aug. 21, 2003) (TRO).

scheduled to conclude in July 2004, at which time more specific facts and findings will be ascertained to help form more complete commentary on the effects of the TRO on UNE and resale pricing.

Given the granular analysis required by the costing and TRO proceedings, states remain in an advantageous position to set UNE rates based on the forward-looking cost principles embodied in the Total Element Long Run Incremental Cost (TELRIC) methodology. The very nature of the FTA's statutory obligations imbues states with a significant role in setting UNE prices and resale discounts, consistent with FCC guidance.

The FCC also sought comment on the resale pricing rules in light of the Eighth Circuit's opinion. The Texas PUC believes that the statutory language, as interpreted by the Eighth Circuit, is sufficiently clear and that further guidance from the Commission is unnecessary at this time. In 1997, the Texas PUC established prices for resale<sup>4</sup> and, as part of the analysis of avoided costs, assumed that the incumbent provider was acting as both a wholesale and retail provider. The Texas PUC also looked at the future retail costs which would be avoided by the incumbent in performing a wholesale operation. Therefore, the resale discount structure established in Texas already reflects the parameters set forth in the Eighth Circuit's decision.

In closing, the Texas PUC appreciates the opportunity to provide initial comments to the FCC in this proceeding. The Texas PUC believes that it is important to highlight to the FCC the current activities taking place at the state level, and to urge the FCC to consider the results of state commission proceedings when adopting new pricing rules. As the FCC gathers information from interested parties on the questions raised in this *NPRM*, the Texas PUC encourages the FCC to consider the current pricing proceedings taking place at the state level, and the critical impact that this proceeding will have on existing state commission policy initiatives.

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<sup>4</sup> *Petition of MFS Communications Company, Inc. for Arbitration of Pricing of Unbundled Loops Agreement Between MFS Communications Company, Inc. and Southwestern Bell Telephone Company*, Docket No. 16189, *et al.*, Award (Dec. 19, 1997) (Second Mega-Arbitration Award).

**Respectfully submitted,**

**Public Utility Commission of Texas  
1701 N. Congress Avenue  
Austin, Texas 78711-3326**

**December 3, 2003**

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**Julie Parsley  
Commissioner**

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**Paul Hudson  
Commissioner**